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SHOOK, HARDY & BACON L.L.P.  
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Intellectual Property Department  
2555 GRAND BOULEVARD  
KANSAS CITY, MO 64108-2613

EXAMINER
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CHNG, JOY POH AI

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHERYL HERTEL, CINDY STAFFORD,  
and JODY YOUNT

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Appeal 2016-001639  
Application 11/777,589<sup>1</sup>  
Technology Center 3600

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Before DEBRA K. STEPHENS, CARL W. WHITEHEAD JR., and  
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–20, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> According to Appellants, the Real Party in Interest is Cerner Innovation, Inc. Appeal Br. 4.

<sup>2</sup> Our Decision refers to Appellants' Appeal Brief filed March 11, 2015 ("Appeal Br."); Reply Brief filed November 16, 2015 ("Reply Br."); Examiner's Answer mailed September 18, 2015 ("Ans."); Non-Final Office Action mailed September 16, 2014 ("Non-Final Act."); and original Specification filed July 13, 2007 ("Spec").

## STATEMENT OF THE CASE

Appellants' invention relates to "facilitating clinicians in the management of patient activities. A patient activity list may be provided with a common view that allows a clinician to review assigned patients and activities for a work period." Spec. ¶ 7.

Claims 1, 10, and 16 are independent. Claim 1 is illustrative of Appellants' invention and is reproduced below:

1. One or more computer storage media storing computer-usable instructions that, when used by one or more computing devices, causes the one or more computing devices to perform a method in a clinical computing environment for facilitating management of clinical activities for a clinician, the method comprising:

presenting a timeline view area showing one or more scheduled clinical activities corresponding with one or more patients assigned to the clinician, the timeline view area comprising a plurality of time periods, wherein each scheduled clinical activity for the clinician is shown in a time period corresponding with a scheduled time for the scheduled clinical activity;

presenting an ad hoc area showing one or more as-needed clinical activities corresponding to the one or more patients assigned to the clinician, wherein each as-needed clinical activity does not correspond to a scheduled time;

receiving a user selection of one or more time periods corresponding with at least one patient having at least one scheduled clinical activity assigned to the clinician; and

upon receiving the user selection of the one or more time periods corresponding with at least one patient, concurrently presenting a clinical activity detail area separate from the timeline view area, wherein the concurrently presented clinical activity detail area provides:

(1) an indication of the user-selected one or more time periods,

(2) an indication of the at least one patient corresponding to the user-selected one or more time periods, and

(3) details of at least one scheduled clinical activity corresponding with the user-selected one or more time periods and the at least one patient, wherein the details of the at least one scheduled clinical activity include a medical order associated the clinician; and

wherein the concurrently presented clinical activity detail area and the separate timeline view area include:

(1) the details of the at least one scheduled clinical activity for the clinician corresponding with the user-selected one or more time periods,

(2) the indication of the user-selected one or more time periods; and

(3) the indication of the at least one patient in context of other scheduled clinical activities for the clinician in the timeline view area.

Appeal Br. 20–21 (Claims App’x).

#### *Examiner’s Rejection*

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject. Non-Final Act. 2.

#### CONTENTIONS AND ANALYSIS

With respect to independent computer storage medium claim 1, and similarly, computer storage medium claims 10 and 16, the Examiner finds these claims are directed to an abstract idea of managing clinical activities that “compares new and stored information, and uses rules to identify options.” Non-Final Act. 2; Ans. 3. The Examiner also finds Appellants’

claims 1–20 “do not include additional elements that are sufficient to amount to significantly more than the judicial exception.” Ans. 3–4.

Appellants present several arguments against the § 101 rejection.

We do not find Appellants’ arguments persuasive. Instead, we find the Examiner has provided a comprehensive response to Appellants’ arguments supported by a preponderance of evidence. Ans. 2–12. As such, we adopt the Examiner’s findings and explanations provided therein. *Id.* At the outset, we note the Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice*, 134 S. Ct. at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). In other words, the second step is

to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (brackets in original) (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity’.” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010).

Here, turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellants’ “claims 1–20 are directed to an abstract idea because an abstract idea is recited in the claims.” Ans. 3. Specifically, steps recited in claim 1 include: (i) “presenting a timeline view area showing one or more scheduled clinical activities corresponding with one or more patients”; (ii) “presenting an ad hoc area showing one or more as-needed clinical activities . . . wherein each as-needed clinical activity does not correspond to a scheduled time”; (iii) “receiving a user selection of one or more time periods” and (iv) “upon receiving the user selection of the one or more time periods corresponding with at least one patient, concurrently presenting a clinical activity detail area separate from the timeline view area.” Accordingly, claim 1 merely recites the familiar concepts of receiving a user selection, analyzing, and presenting/publishing information. As the Federal Circuit has explained in a number of cases, claims involving information/data collection, analysis, and publication are directed to an abstract idea. *EasyWeb Innovations, LLC v. Twitter, Inc.*, 2017 WL 1969492, 2 (Fed. Cir. 2017). *See Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information,

analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). Claim 1, unlike claims found to be non-abstract in prior cases, uses generic computer technology to perform receiving a user selection, analyzing, and presenting information and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, we agree with the Examiner that claim 1 is directed to an abstract idea.

Turning to the second step of the *Alice* inquiry, we find nothing in Appellants’ claim 1 that adds “significantly more,” sufficient to transform the abstract concept of collecting, analyzing, and presenting information into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. Appellants do not argue any particular step or steps recited in claim 1 is individually inventive. None of Appellants’ arguments persuade us that some inventive concept arises from the ordered combination of these steps, which, even if true, would be unpersuasive given that they are ordinary steps in data collection and presentation and are recited in an ordinary order. Instead, claim 1 simply relates to “[d]isplaying data in various areas on a computer screen based on categories and receiving input data [which] are functions that are

well-understood, routine, and conventional activities previously known to the pertinent industry,” as the Examiner correctly recognizes. Ans. 4.

Likewise, Appellants fail to demonstrate that computer storage media claim 10 is substantively different than claim 1. Claim 10 is merely directed to displaying a timeline view area and, in response to a user selection, displaying a clinical activity detail area separate from the timeline view area, and, therefore, is directed to an abstract idea. The additional elements or combination of elements in the claim merely further describe how the data is displayed and thus, amount to no more than instructions to implement the idea on a computer or electronic device that are well-understood, routine, and conventional activities previously known to the pertinent industry. For example, the claim recites “the clinical activity detail area is concurrently presented with the separate timeline view area,” which include “(1) the details of scheduled clinical activities assigned to the particular clinician . . . (2) the indication of the user-selected at least one time period, and (3) the indication of at least one patient.” Viewed as a whole, these additional claim limitations do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself.

Appellants further argue that “because the clinical activity detail view area is presented with the timeline view area such that said areas are visible and do not obstruct one another” the claim provides for “a specific technical objective that improves a computer’s ability to display information and interact with the user by allowing a user to view large amounts of clinical information in a single graphical interface and with minimal navigation to additional window(s) and/or tab(s).” Reply Br. 8–9 (citing *Versata*



*Software, Inc. v. Zoho Corp.*, No. A-13-CA-00371-SS, 2015 WL 6506368, at 3 (W.D. Tex. 2015). We find this argument unpersuasive because, regardless of whether the view areas are presented to avoid obstructing one another, we agree with the Examiner’s finding that “[d]isplaying data in various areas on a computer screen based on categories and receiving input data are functions that are well-understood, routine, and conventional activities previously known to the pertinent industry” and thus do not add “significantly more,” sufficient to transform the abstract concept into a patent-eligible application. *Alice*, 134 S. Ct. at 2357.

Appellants next argue that the appealed claims will not preempt or, in Appellants’ language, “tie up,” the “entire alleged judicial exception of ‘managing (clinical) activities.’” Appeal Br. 14. We find Appellants’ argument unpersuasive because we agree with the Examiner that “[t]he fact that the claims do not preempt do not make them any less abstract.” *See, e.g., OIP Technologies Inc. v. Amazon.com Inc.*, 788 F.3d 1359, 1364–65 (Fed. Cir. 2015) (finding that the claims do not become “any less abstract” due to lack of preemption); *Fairwarning IP LLC*, 839 F.3d 1098 (finding that “the absence of complete preemption does not demonstrate patent eligibility.”). Moreover, the Federal Circuit has held that “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.*

Similarly, Appellants fail to demonstrate that computer storage media claim 16 is substantively different than claim 1 or 10. With respect to claim 1, Claim 16 additionally limits the timeline view area as “comprising a two-dimensional representation in which a first dimension corresponds with patients assigned to the particular clinician and a second dimension corresponds with time periods.” Claim 16 further recites that “the timeline view area is displayed such that all patients assigned to the particular clinician and all time periods for the particular clinician’s shift are substantially simultaneously displayed.” The additional elements or combination of elements in the claim merely further describe the data to be displayed and how the data is displayed and thus amount to no more than instructions to implement the idea on a computer or electronic device that are well-understood, routine, and conventional activities previously known to the pertinent industry. For example, claim 16 recites “concurrently presenting a clinical activity detail area adjacent to the timeline area view in a single interface” which includes “details for at least one scheduled clinical activity corresponding with the user selection of the at least one cell selected from the timeline view area, an indication of the particular patient, and an indication of the at least one time period.” Viewed as a whole, these additional claim limitations do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself.

Because Appellants’ claims 1, 10, and 16 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis we sustain the Examiner’s

rejection of these claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its progeny.

With respect to the dependent claims, we agree with the Examiner's findings that the additional claimed limitations "pertain to displaying various information on the computer display and providing links on the computer display" and as such, are conventional activities and insufficient to amount to "significantly more" under the *Alice* analysis. We therefore also sustain the Examiner's rejection of dependent claims 2–9, 11–15, and 16–20 under 35 U.S.C. § 101.

Appellants argue that the Examiner has failed to make a prima facie case of unpatentability because the Examiner "did not identify or set forth any explanatory reasons in support of the alleged patent ineligibility of all the claims during prosecution." Appeal Br. 10.

We disagree because we find the Examiner did identify reasons in support of the alleged patent ineligibility. *See e.g.*, Ans. 2–10. Moreover, there is no requirement that the Examiner provide any such evidence to make a prima facie case. In rejecting claims 1–20 under 35 U.S.C. § 101, the Examiner notified Appellants of the reasons for the rejection "together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application." 35 U.S.C. § 132. And, in doing so, we find that the Examiner set forth a prima facie case of unpatentability.

### CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101.

### DECISION

As such, we AFFIRM the Examiner’s rejection of claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (1) (iv).

AFFIRMED